

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-217

TERESA G. HALL

APPELLANT

VS. **FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**FINANCE AND ADMINISTRATION CABINET
LORI H. FLANERY, APPOINTING AUTHORITY**

APPELLEE

** ** *

The Board at its regular October 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 20, 2015, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 14th day of October, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Cary Bishop
Teresa Hall
Honor Barker

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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
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This matter came on for five days of evidentiary hearing on March 16, 18 and 31, 2015, and April 1 and 21, 2015, at 9:30 a.m. (each day), at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Teresa Hall, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Cary Bishop. Appearing as agency representative was Honor Barker.

BACKGROUND

1. The Appellant, Teresa Hall, is a classified employee with status, who works as a Revenue Program Officer within the Department of Revenue. She filed a timely appeal on October 1, 2014, from a 15-day suspension. Appellant provided the following statement of facts relating to her appeal:

Attached are documents which illustrates the on-going Hostile work environment, continued non-compliance with ADA Accomodations, continued harassment and stalking of me by Cherlyn Hall and the continued harassment, threatening unprofessional, and psychotic behavior of Randy Moore. Department of Revenue and Finance and Administration Cabinet Management continue to permit these behaviors to continue towards me in retaliation for my refusal to lie for Revenue, altar case information and ignore embezzlement. They have undermined my job performance and ability to advance at DOR. (sic)

2. Appellant was notified of her suspension by means of a September 29, 2014 letter from Appointing Authority Honor Barker which is attached as **Recommended Order Attachment A**.

3. The Appellee, Finance and Administration Cabinet, called its first witness. **Honor Barker** is the Director of Human Resources of the Finance and Administration Cabinet, a position she has held since May, 2013. She supervises seven to eight Human Resource Administrators; her office handles payroll and benefit matters as well as personnel issues, including disciplinary actions. She is an Appointing Authority for the Cabinet. Troy Robinson formerly held her position. Now he is an Executive Director of the Office of Administrative Services, and is her supervisor.

4. Barker reviewed and signed the letter suspending Appellant for fifteen days. A 15-day suspension was determined to be the appropriate disciplinary action for Appellant's misconduct which Barker characterized as "sexual harassment, filing constant petty and unsubstantiated complaints, not following the chain of command, and entering prohibited areas."

5. Appellant's prior disciplinary actions included a written reprimand (July 28, 2009); a three-day suspension (May 20, 2010); and a five-day suspension (January 31, 2013). Appellant was placed on three Performance Improvement Plans (August 14, 2008, January 13, 2009 and March 9, 2009).

6. Appellant was served two "Memorandums of Expectations (MOE)," which were not issued as a form of discipline, but rather to advise Appellant that her behavior in the workplace was unsatisfactory, and her past behaviors would no longer be tolerated. (Appellee's Exhibit 9.)

7. The MOE issued on September 24, 2013, directed Appellant (under the "Conduct" section of the memorandum), in part, to "follow established office security procedures" and to "act professionally at all times... You are not to approach anyone without a business-related need and if needing to do so, you are to speak in an acceptable tone to express in brevity the information needing to be relayed. Yelling or other abusive language will not be tolerated. Expressions of personal opinion should be kept to yourself." (Appellee's Exhibit 9.)

8. The MOE issued on October 27, 2014, directed Appellant (under the "Conduct" section of the memorandum), in part, to adhere to "Executive Order 2008-473 Relating to the Equal Employment Opportunity (EEO) and Non-Discrimination in Employment in the Kentucky State Government, and Kentucky State Government Equal Opportunity (EEO) Policy, Sexual Harassment Policy and Policy Statement on Harassment Prevention. Your prior conduct in referencing co-workers' sexual orientation is improper, prohibited and resulted in disciplinary action. Your previous conduct has caused a toxic and hostile work environment." (Appellee's Exhibit 10.)

9. Barker conducted an investigation before issuing the 15-day suspension letter. She spoke with Appellant directly several times and spoke to her chain-of-command, that is, Carla Briscoe, her supervisor at the time; Lori Detwiler, her current supervisor; and Susan Bailey, who was then her second-line supervisor (since retired). Barker also contacted the Cabinet's and the State's ADA representatives.

10. Barker was asked to identify the “source” of every allegation in the suspension letter. Her testimony can be summarized as follows:

A. The first allegation is that Appellant “referenced the sexual orientation of others in the workplace and routinely treated others in a discriminatory fashion.” Specifically the suspension letter contended that: “on June 17, 2014, at a Personnel Board evidentiary hearing, you (Appellant) admitted that you asked Randy Moore ‘if he thought Anna Gomez was bisexual and interested in me,’...and that you testified, “that Anna Gomez and Cherlyn Hall are bisexual...”

The source for that allegation was the tape of the June 17, 2014 evidentiary hearing before the Kentucky Personnel Board, and numerous complaints about Appellant’s behavior, primarily from Anna Gomez and Cherlyn Hall, according to Barker.

B. The second contention in that allegation is that Appellant “previously stated to your supervisor, Lori Detwiler, that you did not believe she was lesbian or bisexual because ‘you don’t act like that, you don’t act like a bisexual and you’ve never exhibited those towards me.”

Barker testified the foundation for this allegation was a statement from Lori Detwiler.

The policy that Appellant violated in making the above statement was Executive Order 2008-473, which mandates non-discrimination in the workplace and Cabinet Policy 2.5, which forbids sexual harassment.

C. The second allegation in the suspension letter is that: Appellant “consistently claims that she is being harassed by others but provides no substantive evidence,” and that “many others in her place of employment, co-workers as well as supervisors, have expressed feeling bullied and harassed” by her and “fear being subject to false allegations.”

Barker stated that the source for this allegation was the “many, many formal complaints” that Appellant filed, and Appellant’s “refusal to offer proof of her claims.”

D. The third allegation was that Appellant had “removed a security guard from the building security desk and brought him to [her] floor to perform a walk-around...On one occasion [Appellant] asked him to sniff the person of Anna Gomez as well as her work area and afterwards prepared a written statement and attempted to pass it off as having been authorized by the security officer.”

Barker stated that the source of this allegation was a personal interview she conducted with the security officer, Eddie Tillman.

E. Allegations three through six regard written complaints Appellant made on June 24, 2014; July 22, 2014; and two on August 13, 2014. These complaints were about certain alleged behaviors by a co-worker, Cherlyn Hall. The complaints were investigated and found to be unsubstantiated (Appellee's Exhibits 13 – 19.)

F. The seventh allegation was that on August 20, 2014, Appellant "called the offices of the Personnel Board to report that [Appellant] had been assaulted." Barker was contacted by the Office of Legal Services regarding that claim, and she called Appellant to inquire into what had happened. Appellant explained that she had been "chemically assaulted" by an odor in the office – that someone was inappropriately spraying something or wearing a perfume. No other staff members on the floor could identify the odor Appellant complained of. During Barker's conversation with Appellant regarding the "chemical assault," Appellant added that supervisors in the Department of Revenue were "sex-starved, couldn't keep their pants on, cubicle-hopped, and were incompetent." Barker pressed her for details and the name of the supervisors in question, but Appellant only stated, "It will all come out." Appellant filed a written complaint regarding the odor the same day. (Appellee Exhibit 20.)

G. The eighth allegation was in regard to a complaint Appellant filed on September 11, 2014, in which she complained about a co-worker, Mr. Fred Brasseale, and his search for a bag of pretzels. (Appellee's Exhibit 21.)

H. The ninth allegation was that Appellant met with Director Greg Jennings on September 17, 2014, to complain that Randy Moore was talking too much about his personal life on the telephone. Appellant repeatedly called Mr. Moore "psychotic," and she filed a written complaint about Moore the next day. Barker's source for this allegation was an e-mail from Greg Jennings documenting his meeting with Appellant. (Appellee's Exhibit 23), and Appellant's written complaint (Appellee's Exhibit 22).

I. The last allegation was in regard to a written complaint Appellant filed on September 23, 2014, complaining that Randy Moore told her that "the coffee was ready," and had earlier asked Appellant if she knew where the "thick green paper" was. Lori Detwiler, Branch Manager and Appellant's Supervisor, and Greg Jennings discussed the complaint with Appellant and Randy Moore. Moore stated that he "was simply trying to be nice." Detwiler and Jennings asked Moore "to cease any attempts of any interaction whatsoever" with [Appellant] at her request." Detwiler and Jennings found Appellant's complaint to be unsubstantiated. (Appellee's Exhibits 24 and 25.)

11. Barker stated she felt a 15-day suspension was the appropriate disciplinary action because Appellant had made inappropriate and unsubstantiated slurs. She specifically referenced individuals as lesbian and bisexual; she called managers "sex-starved," and a co-worker "psychotic." Barker stated that Appellant had also made persistent accusations against Anna Gomez and Cherlyn Hall. Appellant also made "petty complaints," complaining of a co-worker's search for pretzels, green paper, and stating that "coffee was ready."

12. Barker testified that Appellant's complaints created a stressful environment, and the morale of the office was very low. She added, "People fear for their safety. They don't know what to expect from her."

13. Barker was asked if Appellant was being disciplined for filing complaints. She responded, "No, but we want it to be within the realm of reason. It is in essence the same complaint over and over – offered in a way that there is no way to substantiate it."

14. As for Appellant's ADA complaints regarding her respiratory condition, Barker stated that the Cabinet has provided Appellant with four different filtering respiratory masks. Appellant's division has also been informed that employees are not to use chemicals, candles, scented wipes, perfumes, cologne, body lotion or aerosol sprays. "There is signage in the office's restrooms and common areas," Barker stated, "but we cannot police the high number of visitors that come to her floor." Appellant had made the following complaints regarding odors in the office since June, 2014:

June 21, 2014	Appellant complained of a fragrant chemical odor. The individual responsible for the odor could not be determined.
December 3, 2014	Appellant complained that the bathroom smelled of shampoo. The source of the odor could not be determined.
December 31, 2014	Appellant complained of a citrus smell. This odor was not substantiated.

15. As for the masks that have been purchased for her, Barker testified that the Cabinet's ADA Coordinator worked with Appellant's physician to identify several masks that would work, and Appellant was allowed to choose the ones she wanted. However, one by one, Appellant stated the masks were not effective. She is now requesting a pediatric mask. Barker added that Appellant does not wear the mask on a regular basis.

16. Barker was asked to address why Appellant was taken off a flex schedule. Barker stated that Appellant's flex schedule had allowed her to work four days per week, with her day beginning at 6:30 a.m. However, her supervisor did not arrive until 8:00 or 8:30 a.m., "and it seemed that a large number of events were occurring between 6:30 a.m. and 8:30 a.m." Barker cited as an example the occasion when Appellant enlisted a security guard two different times during that time of day to substantiate an odor she had detected. Now her schedule is "more aligned" with her supervisor's. Barker added, "Flex scheduling is a privilege. We try to extend it when it works for the individual and the agency. In this case, it was no longer meeting the needs of the agency."

17. Barker was asked if any employees had left their employment with the state or requested a transfer due to Appellant's actions. Barker answered that Anna Gomez "requested a transfer. She said the request was due to her inability to resolve her issues with Appellant. Cheryln Hall left state government because 'she couldn't take it anymore.'"

18. On cross-examination, Barker was asked if she was aware of a "race photo" incident that had recently occurred in her office. Barker stated that she was aware that someone had posted a picture from a movie by the badge scanner. The picture shows an individual of Hispanic descent with the caption, "Badges? We don't need no stinkin' badges." Barker agreed that it was insensitive, and agreed that Appellant had brought a legitimate concern regarding the picture to management's attention. However, Appellant's complaint regarding this picture was not included in the allegations supporting her 15-day suspension.

19. Barker was asked to address allegation #7 in the suspension letter (Appellee's Exhibit 1). Barker agreed that Appellant (due to her respiratory condition) could be assaulted chemically. Barker added, "I would consider it an assault if someone intentionally sprayed something to be of harm, but there was no evidence that happened in this case."

20. Barker was asked if it is appropriate for a Revenue employee to say on the telephone, "is a bull's butt beef?" Barker answered, "It is not a term I would use, but that is a supervisory issue. It is not unreasonable to bring that issue to the attention of a supervisor, but it is not something I need to be apprised of by an employee."

21. **Sherita Miller** is a Program Investigative Officer II. Her general duties are assisting with ADA accommodations, and conducting EEO investigations. Miller introduced into the record an investigation she submitted to Cary Bishop, Office of General Counsel, on April 11, 2014, regarding allegations of sexual harassment and workplace violence. This report was introduced into the record of a previous Personnel Board appeal, *Teresa Hall v. Finance and Administration Cabinet* (Appeal No. 2013-286).

22. Miller was asked what policy would be violated if an employee called someone a lesbian. She responded that calling someone a lesbian is considered a "derogatory comment," and is also a violation of the Cabinet's Policy on Sexual Harassment No. 2.5, Section II, which reads, "Sexual harassment can take place in a variety of situations that include, but are not limited to, 'verbal, derogatory comments, epithets, slurs or jokes.'"

23. Miller testified that Appellant had contacted her in regard to ADA accommodations. Specifically, Appellant had complained to Miller of "chemical attacks," and had requested a fifth respiratory mask. Miller drafted a letter, prepared under the signature of Yvette Smith, Executive Director, and sent it to Appellant on February 27, 2015. The letter requested that in order "to ensure the appropriate accommodation, please provide a recommendation from your healthcare provider/rehabilitation professional for a mask that will enable you to perform the essential functions of your job. The recommendation should be specific as to all details such as brand, model, size, or any other options that are available." Attached to the letter was a position description of Appellant's position of Revenue Program Officer. (Appellee's Exhibit 31.) As of the evidentiary hearing, the Appellant had not submitted a recommendation from her healthcare provider in response to this request.

24. On cross-examination, Miller was asked what she had done since April 2014 to address her finding in her report that "It is reasonable to conclude that Teresa Hall is being treated unfairly because employees have been instructed not to talk or be around her. This can be viewed as a form of retaliation, i.e., isolation." (Appellee's Exhibit 26.) Miller responded, "I did not implement anything. I was later given the information that not speaking to [Appellant] was a directive from Human Resources, that is, Honor Barker." Miller added that if she had known that was a directive from Human Resources, she would not have included it in her report.

25. Miller was asked, "Is that appropriate for HR to condone "isolation?" Miller responded, "No." As to why steps weren't taken to address that issue, Miller responded, "I would have to discuss that with my Executive Director."

26. Miller was asked to address a complaint filed by Appellant on November 17, 2014, which was introduced as Appellant's Exhibit 1. The complaint concerns the behavior of Susan Penny, Motor Vehicle Tax Branch Manager. Specifically, Appellant alleges that Penny recited an article about Bill Cosby's sexual abuse of women and children. Appellant states in her complaint that "Susan chose to recite the article loudly, pausing periodically due to uncontrollable laughter." Miller stated that she could not comment on the complaint because the allegations were still under investigation.

27. **Randy Moore** is a Mineral Assessor II for the Cabinet, a position he has held for the past 11 1/2 years. His duties include assessing minerals, creating maps and answering tax payers' questions about their property. He has been a co-worker of the Appellant's for the past two to three years, although she works in a different department.

28. Moore stated that he has degenerative disc issues and must walk with a cane. He heard Appellant comment once that he "was a fake – nothing wrong with me. She said I should throw my cane away and walk like a man."

29. Moore related another incident with the Appellant. One day she walked into his cubicle without an invitation. He tried to stand up and turn around when both of Appellant's breasts "slapped his back." Moore was afraid she would accuse him of sexual harassment for that. "She created an environment in the office that is not good."

30. Sometime "mid-2013" (Moore could not remember the exact date), Appellant came to his cubicle and asked him if he thought Anna Gomez was a lesbian. He responded "absolutely not." Two weeks later, she asked him that question again. Moore was not sure if Gomez knew that Appellant was questioning her sexual orientation.

31. As for Cherlyn Hall, Moore stated that when she resigned, she told him, "I'm tired of this place. I'm tired of getting harassed. I can't get anything done. My parents are getting old, too."

32. Moore was asked to address the allegations Appellant made against him, specifically that on September 17, 2014, Appellant characterized Moore as "psychotic" for the

way he spoke on the phone, and that on September 23, 2014, Appellant complained that Moore had advised Appellant that the coffee was ready and a day earlier had asked her where the green paper was.

33. Moore stated the way he is successful at his job is by building rapport with taxpayers and bankers. He often speaks to "regular people" from rural areas, and "talks on their level." Moore stated that the phrase "Is a bull's butt beef?" is a common phrase in Eastern Kentucky. The taxpayers that he deals with there are not offended by it, and, in fact, "they get a good laugh out of it."

34. As for the "coffee incident," Moore stated he was just being nice. To say that he has a "psychotic fixation" with coffee is ludicrous. He added, "I was not being snide or sarcastic. I was not trying to provoke her." Moore also denied that there was anything snide or angry in his tone when he asked Appellant where the green paper was.

35. As for Appellant's contention that she was being sexually harassed by Anna Gomez and Cheryl Hall, Moore testified that he had never seen any behavior by either woman to indicate they had a sexual interest in Appellant, or that they had harassed her in any way.

36. Moore testified that he knew Appellant had "ADA restrictions" and that no one on their floor was to use sprays of any kind or wear perfume. When questioned if he had ever observed anyone not following that directive, Moore answered, "Yes, I know some men don't follow it, but they are distant from her, that is, they sit at the far end of the southern part of the building. We take up the fourth floor, and their offices are in the corners. I don't know the names of all of them, but they wear too much cologne for my taste." When pressed on who these individuals were, Moore stated that he could recall Jay Wallen and Luke Tackett wearing cologne sometime in the past six months.

37. Moore concluded his testimony on direct, "Camaraderie has been down. Many of my co-workers are looking for other positions. I feel like I have been harassed."

38. On cross-examination, Moore was asked if he had ever complained about her "harassment" of him to management. Moore answered, "No...It would do no good. I would have to go to my supervisor's office every other day."

39. Moore testified that he has been told by his supervisor not to speak to Appellant, and he has told other co-workers himself not to speak to her.

40. **Yvette Smith** is the Executive Director of the Finance and Administration Cabinet's Office of Equal Employment Opportunity (EEO) and Contract Compliance, a position she has held since November, 2004. She is the Cabinet's EEO Coordinator and manages the Cabinet's ADA programs.

41. Smith was asked to address the ADA accommodations the Cabinet has made at Appellant's request. She responded that non-florescent lighting was installed in Appellant's

cubicle, a chair was provided that suited Appellant ergonomically, an anti-glare screen was provided for Appellant's computer, and certain aerosols and sprays had been banned from Appellant's work area. In addition, Appellant had been provided with four different respiratory masks. Smith added that Appellant had asked for a fifth mask because the others were not satisfactory. Smith could not recall the particular reasons why the masks did not work for Appellant, but did recall that one of them made Appellant sweat. Before another mask would be ordered, Smith stated, Appellant needed to provide certain information from her physician. A letter was sent to Appellant, via e-mail and USPS mail, on February 27, 2015, under Smith's signature, informing her that a recommendation from her healthcare provider was necessary before the next mask could be purchased. (Appellee's Exhibit 31.)

42. **David Gordon** is the Executive Director of the Office of Property Valuation, a position he has held since 2008. Gordon oversees the following divisions: Local Support; State Valuation; Mineral and Taxation and GIS Services. He is Greg Jennings' supervisor in the Minerals and Taxation Division, where Appellant works.

43. Appellant's chain-of-command is Lori Detwiler, Branch Manager; Carla Briscoe, Assistant Director; Greg Jennings, Director; and David Gordon, Executive Director of the Office of Property Valuation.

44. Gordon stated that he is aware of Appellant's ADA accommodations, and on May 16, 2013, he sent an e-mail to "OPV employees located on the fourth floor" of the State Office Building. The memo informed employees that the use of "aerosol sprays, room deodorizers, deodorizing plug-ins, fragrant candles and potpourri is prohibited in cubicles, bathrooms and common areas located on the fourth floor."

45. Gordon was asked to address Appellant's contention that if she smells a strong smell around her work area, does that mean her managers are not enforcing his memo? Gordon answered that his office has an open door policy, and visitors often come and go throughout the fourth floor. Gordon added that when Appellant voices a complaint about an odor, one of the supervisors investigates and documents their findings.

46. As for how Appellant interacts with her co-workers, Gordon stated that Appellant's co-workers "feel nervous, fearful that something they do unintentionally may create a reaction."

47. On cross-examination, Gordon was asked how many e-mails he has sent to OPV employees on the fourth floor relating to the ban on aerosols and sprays. Gordon answered, "three – the original memo I sent in May 2013; another one sent to management two weeks later, and a third one in December 2014."

48. The second e-mail, sent May 20, 2013, stated, "I have received two complaints already today about a person or persons not taking the memorandum from last week seriously. Please be sure your staff follows the guidelines therein." (Appellee's Exhibit 30.)

49. The third memo, sent on December 9, 2014, to all employees on the fourth floor of the State Office Building, was similar to the original memorandum, but added “perfumes/colognes” to the list of prohibited items.

50. **Greg Jennings** is a Director II in the Finance and Administration Cabinet’s Division of Minerals, Taxation and GIS Services. Jennings’ Division is divided into five branches, one of which is the Severance Branch, where Appellant works. Jennings has been Appellant’s third-line supervisor for about a year, but they have worked in the same division for the past five years.

51. Jennings was asked to specifically address Appellant’s complaint, filed June 24, 2014 (Appellee’s Exhibit 13). The complaint was that Cherlyn Hall “hovered” around her cubicle, and “stared” at her. Jennings testified that he spoke to Cherlyn Hall about the incident, but she explained she was merely speaking to one of the employees under her supervision, Fred Brasseale. Jennings found the complaint to be unsubstantiated.

52. Jennings addressed the complaint Appellant filed on July 22, 2014 (Appellee’s Exhibit 15). The complaint was that Cherlyn Hall “peered” into her cubicle. Cherlyn Hall stated that she was in her employee’s cubicle, with her back to Appellant’s cubicle. She heard a noise and turned to see what it was. When she turned, Appellant was looking at her. Jennings found the complaint to be unsubstantiated.

53. Jennings addressed the complaints Appellant filed on August 13, 2014 (Appellee’s Exhibits 17 and 18). The complaint was that Cherlyn Hall entered the restroom after Appellant, and then “followed” Appellant back to the office. Cherlyn Hall then stuck her head in Appellant’s cubicle and said, “I was not following you.” Cherlyn Hall discussed this incident with Randy Moore and the two laughed about it. (Appellee’s Exhibit 18.)

54. After the filing of this complaint, Jennings informed Cherlyn Hall that “it was best not to respond” to Appellant, and admonished Cherlyn Hall and Randy Moore that it is best not to discuss incidents that happen with Appellant in the area around Moore’s cubicle (which is close to Appellant’s).

55. Jennings addressed Appellant’s September 23, 2014 complaint regarding “the continuation of psychotic behavior from Cherlyn Hall.” Specifically, Appellant stated that she heard Fred Brasseale ask Lori Detwiler for his pretzels when Cherlyn Hall “appeared at the entrance to your cubicle.” Appellant characterized Cherlyn Hall’s action as “stalking and harassment” and further evidence of her “psychotic and abusive behavior.” (Appellee’s Exhibit 21.)

56. Jennings explained that Fred Brasseale has a disability and Cherlyn Hall would help in different ways, including, in this instance, returning pretzels he had asked Lori Detwiler to store for him. (Brasseale was afraid he would eat them all, so he asked Detwiler to hide them.) Cherlyn Hall went to Detwiler’s cubicle to retrieve the pretzels and Appellant happened to already be in Detwiler’s cubicle, unbeknownst to Cherlyn Hall.

57. Jennings did not investigate this complaint. Jennings stated, "At some point, if you have a baseless complaint, I want to shield my other employees – it just stirs up hostility."

58. Jennings addressed Appellant's September 18, 2014 complaint that Randy Moore engages in "inappropriate and unprofessional phone conversations," including asking someone, "Is a bull's butt beef?" (Appellee's Exhibit 22.) Jennings' response to this complaint was that Appellant was "using her own standards. The problem is, she is not in charge...It is okay for a mineral assessor to have good relationships with taxpayers." Jennings did not take any further action.

59. Jennings addressed Appellant's September 23, 2014 complaint that Randy Moore told Appellant "that he made coffee and it was ready." Moore also asked Appellant if she "knew where the green paper was." In the complaint, Appellant also states that Moore and Anna Gomez "have an intimate relationship," and characterized Moore's actions as "this latest pathetic and desperate desire of Randy Moore to interact with me." (Appellee's Exhibit 24.)

60. Appellant's supervisor, Lori Detwiler, spoke to Mr. Moore, who stated he was only trying to be nice. Detwiler and Jennings asked Moore to "cease any attempts of any interaction whatsoever" with Appellant, at her request. (Appellee's Exhibit 25.) Jennings concluded, "Boiled down to it, she doesn't want Randy Moore talking to her at all, but that makes it very difficult to work, because he sits right next to her."

61. Jennings was asked how accurate Appellant is in her complaints. He responded, "They are embellishments. She takes simple actions and blows them out of context. She also uses hyperbolic language, such as suggesting that Gomez and Moore have an 'intimate relationship.'" Jennings added they had uncovered no evidence that Moore's and Gomez's relationship was inappropriate.

62. Jennings stated that the strong language used in her complaints such as "psychotic, obsessive, stalking and sex-starved" is insulting and defamatory. "They end up in writing, and they end up in public record." The effect of Appellant's accusations on her co-workers is "tremendous – it affects their reputations. They are good people, and they don't deserve this treatment."

63. Jennings stated that what Appellant stated under oath regarding her co-workers at the previous Personnel Board hearing (*Teresa Hall v. Finance and Administration Cabinet*, Appeal No. 2013-286) was "inappropriate slurs. She made allusions to affairs; she calls [them] incompetent and corrupt, sex-starved, and sexual predators."

64. Jennings testified that a great deal of resources go into investigating Appellant's complaints. They must be reviewed, discussed, and the findings put in writing. Jennings stated that these complaints "take up 75% of Lori Detwiler's time." Carla Briscoe, "spends half her time investigating these complaints as well."

65. Jennings was asked if Appellant was being suspended because she filed complaints. He responded, "Other employees file complaints, but they have merit. These are baseless."

66. As for Appellant's ADA accommodations, Jennings stated that in his office "we do everything we can – we send out notices and memos, we gave her multiple masks, and we investigate the smells she detects." Jennings added that Appellant is supposed to wear her mask, but only does so intermittently.

67. Jennings was asked if he thought the 15-day suspension was appropriate. He answered that he thought it was "quite generous," adding that in his opinion, Appellant is "blatantly insubordinate. She targets people; she uses hyperbolic language that is degrading; she files petty complaints. She is responsible for creating a toxic environment."

68. On cross-examination, Jennings was asked if he told Cherlyn Hall not to talk to Appellant. Jennings answered in the affirmative because Appellant "made it very clear she wanted nothing to do with Cherlyn, including talking to her."

69. **Troy Robinson** is the Executive Director of Administrative Services, a position he has held for the past two years. Robinson oversees five divisions, including Human Resources. Robinson was Director of Human Resources (HR) in his previous position, which is now performed by Honor Barker.

70. As Director of HR and as an Appointing Authority, Robinson wrote and issued Appellant's 3-day suspension on May 20, 2010. This suspension was issued for "rude and disrespectful behavior." (Appellee's Exhibit 6.)

71. Robinson also wrote and issued Appellant's 5-day suspension on January 31, 2013, for sending e-mails which contained "non-work related information pertaining to the history of assault weapons and assault weapon bans." (Appellee's Exhibit 8.)

72. **Carla Briscoe** is the Assistant Director of Property Valuation's Division of Minerals Taxation and GIS Services, a position she has held for the past seven months. Her prior job was Branch Manager of the same division. Briscoe has known Appellant for the past two and a half years, and is currently her second-line supervisor.

73. Briscoe participated in the July 21, 2014, and August 13, 2014 investigation of incidents that Appellant complained of regarding Cherlyn Hall, that is, that Cherlyn was "stalking and glaring" at her. The investigation revealed "No behavior other than day-to-day office activity," Briscoe stated.

74. Briscoe testified that Appellant's complaints were not "reasonable – they get everybody worked up." Briscoe stated that Appellant's complaints also contain characterizations, such as the use of words like "stalking," "psychotic," and "chemical assault" that are not fair, accurate or professional.

75. Briscoe has also investigated Appellant's report of smelling different odors. According to Briscoe, she was never able to substantiate that someone on Appellant's floor had improperly used a spray or cleaning product. Briscoe was asked if a co-worker had ever intentionally violated the memo disseminated by David Gordon directing staff to refrain from assorted sprays, candles and cleaning products. Briscoe answered, "Not intentionally, but one time a person used a Clorox wipe, and I found it in the garbage can. But that is the only time – it happened over a year ago, and was discussed at the last hearing."

76. Very recently – on March 26, 2015, Appellant reported a smell in the bathroom. Briscoe and Lori Detwiler investigated, and discerned a slight odor from the bathroom mirrors. Greg Jennings was informed of this, and he contacted the manager of the cleaning crew.

77. Briscoe added that when Appellant smells an odor, she has been instructed to either wear her respiratory mask, or go home.

78. Briscoe addressed the incident with the security guard, alleged on page 2 of the September 29, 2014 suspension letter. (Appellee's Exhibit 1.) Briscoe stated that Appellant brought the document to her, stating that it was a letter from the security guard. Briscoe was skeptical that the guard wrote it – it seemed to be written in Appellant's writing style. When Briscoe asked the guard, Eddie Tillman, if he had written it, he said, "No," but did admit to signing the document Appellant gave him.

79. Briscoe was asked if she felt Appellant's 15-day suspension was "proper." She answered in the affirmative, stating Appellant "has falsely accused people, forged a letter, and said that people are 'stalking' her when they are just going out for a walk."

80. On cross-examination, Briscoe was asked if it was true that Appellant told her she composed the letter because Eddie Tillman did not have access to a computer. Briscoe replied, "No, you said 'This is a letter from the security guard.'"

81. Briscoe was asked if Appellant's physician had ever stated that Appellant had to wear her mask. Briscoe answered that she could not remember.

82. **Jason Mills** is a Revenue Branch Manager, a position he has held for the past year. Prior to assuming that position, he was an Information System Supervisor in the same branch. Mills has worked with Appellant for as long as she has been with Unmined Minerals. Mills summarized his relationship with Appellant as "I work near her, but have very little interaction with her."

83. Mills stated that in the past (he estimated sometime in 2013), Appellant accused Mills of "watching" her. She filed a complaint regarding this alleged activity, but, according to Mills, "he was cleared by the EEO."

84. Asked to refer to Appellant's September 29, 2014 suspension letter, Mills stated that he had felt "bullied and harassed" by Appellant, and fears "being subject to false accusations." (Appellee's Exhibit 1.)

85. Mills testified that he had never observed Appellant being subject to harassment or discrimination. As for ADA accommodations, he has never observed anyone using aerosols or any other items forbidden from use.

86. On cross-examination, Mills was asked if it was true that he avoided Appellant in the workplace. Mills answered, "I try to avoid [Appellant] as completely as possible. I don't give [her] eye contact. We're not in the same branch. I want to avoid going back through this again."

87. **Donna Durr-Richards** is currently employed as an Internal Policy Analyst II with the Cabinet, a position she has held for the past 15 months. She has known Appellant for the past three years. Her only connection to Appellant was that she used to work in close proximity to her.

88. Richards stated that when she worked in the Motor Vehicle Tax Branch, Appellant was located two cubicles away from her. One day (she estimated this occurred sometime in early 2013), she was in the process of archiving files. Appellant moved her boxes twice in the same morning. Richards had to ask Appellant's supervisor at the time, Carla Briscoe, to intervene. Richards described Appellant's behavior that morning as "loud and irrational."

89. Richards was asked to look at Appellant's September 29, 2014 suspension letter. Richards stated that she was "bullied and harassed" by Appellant. (Appellee's Exhibit 1.)

90. As for Appellant's ADA accommodations, Richards testified that her co-workers complied with it.

91. On cross-examination, Richards was asked if it was true that she and Appellant avoided each other in the workplace. Richards responded, "I can only speak for myself, but yes."

92. **Anna Gomez** is a Cartographer III, a position she has held for the past 10 years. She has known Appellant for close to three years.

93. Gomez recalled two incidents involving the Appellant. About two years ago, a security guard came to her work area, trying to smell if she had violated the directive regarding Appellant's ADA accommodations, such as spraying an aerosol. About two months later, while she was making coffee, Appellant came very close to her (about two feet away), and watched her. "I felt harassed," Gomez stated. "She didn't say anything to me, but her supervisor told me later that she thought I was wearing perfume."

94. Gomez was asked if she was aware Appellant had made a comment about her alleged sexual orientation. She answered that Appellant had made the comment to Randy Moore, and he informed her of Appellant's comment.

95. Gomez described her relationship with Appellant: "she listens to your conversations and twists them. I don't feel safe. I don't leave my cubicle because I don't want to interact with her. I try to avoid her as much as I can. I just hate working there; it's such a bad place. I have asked to be transferred."

96. On cross-examination, Gomez stated that Appellant's supervisor at the time, Carla Briscoe, told her to stop speaking to Appellant. Gomez estimated that this directive was given about a year and a half ago, and she and Appellant have not spoken since.

97. **Lori Detwiler** is a Branch Manager with the Minerals and GIS Severance Tax Branch, a position she has held for almost a year. She supervises two employees, one of whom is Appellant.

98. Detwiler was asked to address Appellant's June 24, 2014 complaint. Appellant had complained that Cherlyn Hall was "leering" and "stalking" Appellant. Detwiler's investigation into the complaint revealed that Cherlyn had a legitimate reason for being in Fred Brasseale's cubicle, and her "running into" Appellant was accidental. She had no idea Appellant was in the hallway.

99. As for Appellant's July 22, 2014 complaint that Cherlyn Hall was "peering" into Appellant's cubicle, Detwiler's investigation revealed that Cherlyn had been in Brasseale's cubicle and she heard a sound and merely turned her head to see what it was.

100. Appellant's August 13, 2014 complaint alleged that Cherlyn Hall had followed Appellant to the bathroom and back to her cubicle. Detwiler's investigation into the situation revealed that Cherlyn was unaware that Appellant was in the restroom, and they ended up leaving at the same time.

101. As for Appellant's allegation that Cherlyn said to Appellant, "I'm not following you," and then laughed with Randy Moore, Cherlyn admitted that she should not have responded that way.

102. Appellant's August 20, 2014 complaint was that an odor was detected requiring Appellant to put her respiratory mask on. Detwiler went to Appellant's work area, but could not detect the smell.

103. Appellant's September 23, 2014 complaint was that Cherlyn blocked the entrance to Detwiler's cubicle after Fred Brasseale asked for his pretzels. Detwiler stated that Cherlyn was coming to her cubicle to retrieve the pretzels that Detwiler stored for Brasseale.

104. As for Appellant's September 18, 2014 complaint that Randy Moore did not speak professionally on the phone, Detwiler forwarded this complaint to Greg Jennings as Detwiler is not Moore's first-line supervisor.

105. After Appellant submitted the September 23, 2014 complaint that Randy Moore had told her the coffee was ready and asked her if she knew where the green paper was, Detwiler and Carla Briscoe told Moore that Appellant was uncomfortable talking to him. Moore replied that he would just not talk to her anymore.

106. Detwiler summed up the nature of Appellant's complaints: "I think many times the facts she described have occurred, but they are just normal office interaction. But she characterizes these facts, and her co-workers, in strong language."

107. Detwiler was asked if it is okay for an employee to file a legitimate complaint. Detwiler responded, "The problem you have with hers is that when you have multiple complaints, and you spend hours investigating and documenting, and then you don't find anything, that is a concern. And it cuts down on your work time."

108. Detwiler was asked to address why Appellant's flex schedule was changed. Detwiler responded that Appellant reported several early morning "incidents" when management had not yet arrived. Taking Appellant off a flex schedule "was an attempt to get her schedule and my schedule closer together," Detwiler stated.

109. Detwiler recalled an incident that occurred sometime after she had been promoted to Branch Manager in February 2014. Appellant met with Detwiler, stating that she wanted to bring Detwiler "up to speed" with things she had encountered. Detwiler recounted that Appellant stated she had issues with personal physical contact – for instance, she did not want a pat on the back. She also referenced the fact that there were lesbians in the office. She said she didn't think I [Detwiler] was 'one of them,' but she would 'keep an eye on me.'

110. As for Appellant's ADA accommodations, Detwiler stated that to her knowledge Appellant's co-workers have been following the directive in David Gordon's December 9, 2014 memo. (Appellant's Exhibit 5.) But Detwiler added that "We sometimes have some outside people that come on our floor, so Teresa [Appellant] needs to be responsible for her health as well by wearing her mask, or leaving the office to go home, or work in the conference room." Detwiler added that Appellant does not generally wear her mask.

111. Detwiler stated that a Memorandum of Expectation for Appellant was put into place on September 24, 2013. It stated that Appellant's "speaking to others in a derogatory manner and harassment are behaviors that cannot continue." The behaviors were not corrected, and a revised Memorandum of Expectations was issued on October 27, 2014, approximately one month after her 15-day suspension.

112. On cross-examination, Detwiler was asked how many "respiratory events" has Appellant reported since Detwiler became her supervisor. Detwiler answered, "I can't say, but I

know it is frequent, sometimes up to three in a week. But there are some periods when there are no complaints. But I have investigated every one."

113. Detwiler was asked if she recalled the incident on January 20, 2015, when Appellant's reaction to a substance in the office forced her to have to take her heart pills and rendered her unable to drive back to Lexington. Detwiler stated that she remembered Appellant kept going back to where the smell was emanating although she had been instructed to stay away from it, and work in the conference room.

114. Detwiler was asked if she remembered Susan Penny talking about Bill Cosby. She replied that she had heard Bill Cosby's name mentioned and that the tone of the conversation was "incredulous, one of disbelief. The conversation was not making fun of anyone being raped."

115. Detwiler was asked to address Appellant's August 20, 2014 report about an odor emanating from an area around Detwiler's cubicle. Detwiler answered that whenever Appellant complains of a smell, she tries to locate the source of the smell herself. But, she added, "We can do our part, but [she] needs to wear [her] mask if [she] smells an odor. We do not have control over everyone that comes into the floor. [She] has a personal responsibility to take care of [her] health by wearing [her] mask. When I asked [her] what [she] uses when [she] goes to the mall, [she] showed me a mask that [she] keeps in [her] purse." Detwiler added that she had suggested Appellant get a full-face mask for permeable gases, but Appellant did not want that, and ordered a loose-fitting surgical mask instead.

116. Detwiler was asked to refer to the finding in Sherita Miller's April 11, 2014 Investigative Report (Appellee's Exhibit 26), which found that "It is reasonable to conclude that Teresa Hall [Appellant] is being treated unfairly because employees have been instructed not to talk or be around her. This can be viewed as a form of retaliation, i.e., isolation." Detwiler stated that isolating Appellant was done at her [Appellant's] request, and management was trying to accommodate her [Appellant's] wishes. "We were minimizing interactions between [Appellant] and others she did not get along with." Detwiler stated that she did not consider that "bullying."

117. By agreement of the parties, the cross-examination of **Sherita Miller** was taken out of order. (Direct examination had been conducted earlier.)

118. Miller was asked if it was permissible for employees to "speak of things of a sexual nature" generally. She replied that it was not. Miller was then questioned what the appropriate discipline would be for an employee who engaged in that behavior. Miller answered that if her office recommends discipline at the conclusion of an investigation, that recommendation is made to Honor Barker in the Human Resources Division. "We don't decide what disciplinary action an employee receives," Miller stated.

119. Miller was asked if she investigated the written allegations Appellant submitted on November 17, 2014, regarding the behavior of Susan Penny, who discussed a news article

with a co-worker regarding Bill Cosby. (Appellant's Exhibit 1.) Miller stated that she did. She found that Penny and Jay Wallen did engage in a conversation regarding Bill Cosby, because he was in the current news. A witness to the conversation, Eileen Thompson, stated that "no one had laughed about the article." Lori Detwiler, who was also interviewed, described the conversation as "end-of-the-day chatter," but also did not hear laughter.

120. Susan Penny is the Branch Manager of the Motor Vehicle Tax Branch, a position she has held since February, 2014. Penny stated that Appellant plays no role in her department, but for the past three years they have worked in close physical proximity – their work cubicles are close to each other.

121. Penny stated that she filed a harassment complaint against Appellant on December 15, 2014, with the Cabinet's EEO office.

122. Penny stated that Appellant's characterization of the conversation she had with Jay Wallen regarding Bill Cosby as "sexually explicit behavior" was untrue. "Jay and I were discussing the situation for a few minutes – just the news article we saw on MSN."

123. Penny was asked if she agreed with the statement in Appellant's September 29, 2014 suspension letter that Appellant has "disrupted the office with petty complaints." (Appellee's Exhibit 1.) Penny stated she agreed with that characterization, adding, "We have continuous discussions about spraying things, perfume and identifying if 'something stinks.'"

124. Penny was asked if it was true that Appellant made "inappropriate and unsubstantiated slurs." (Appellant's Exhibit 1.) Penny answered in the affirmative, adding, "She walks through our area and says 'it stinks in here.' She makes a weird laugh. She continuously walks back and forth."

125. On cross-examination, Penny was asked if she followed David Gordon's December 9, 2014 memorandum forbidding the use of sprays and perfumes on the fourth floor. Penny admitted that Greg Jennings had smelled a scent on her, but she doesn't spray perfume on herself in the building. "I put perfume on in my home," she stated, "and I don't put it on loud." Penny agreed that her perception of what constitutes "loud" is subjective.

126. Penny was asked to address the incident reported by Appellant on January 30, 2015, in which she alleged that Penny "verbally broadcast and laughed extensively" about a state employee who had attempted suicide (Appellant's Exhibit 2). Penny responded that she did "not broadcast it loudly. We weren't ridiculing the woman. My employee asked me if I knew her and I stated that I did."

127. Penny was asked if Appellant's "walking around" was merely due to her traveling to her second work space. Penny responded, "Fifty percent of it is, the other 50% is [Appellant's] picking and choosing to see what [she] can hear or see to complain about me."

128. **Honor Barker**, Director of the Division of Human Resources, resumed the witness stand. She testified that one day last week Greg Jennings sent an e-mail to Carla Briscoe, Assistant Director; Yvette Smith, Cabinet ADA Coordinator; Elyse Weigel, Deputy Commissioner, and herself. The e-mail stated that some employees are of the impression they can wear perfume or cologne to work as long as it is sprayed at home. The e-mail clarified that perfume and cologne are not to be worn in the work place at all. Barker stated the memo was likely precipitated by testimony that had been elicited at this evidentiary hearing, specifically the testimony of Randy Moore that Jay Wallen and Luke Tackett wore cologne to the office.

129. Barker stated that this clarification memo would be disseminated to staff sometime soon to resolve any confusion regarding this issue.

130. **Appellant, Teresa Hall**, testified on her own behalf. She began her employment with the Department of Revenue on February 21, 2006, in the Division of Collections, Child Support Division. On June 4, 2012, she transferred to the position of Revenue Program Officer in the Mineral Severance Tax Branch.

131. Appellant testified that when she worked in the Division of Collections she “had three ADA accommodations” that went unmet. That department would not comply, Appellant stated, even though she had “volumes” of medical documentation that she needed an ergonomic chair, that she had a visual impairment in regard to fluorescent lighting, and that she has respiratory issues including chronic asthma.

132. Appellant stated that the harassment and hostile work environment issues worsened at the Mineral Severance Tax Branch. She stated the continued use by the employees on her floor of fragrances were an example of how her supervisors there have failed to maintain safe working conditions. In Appellant’s opinion, management continues to “conspire” against her and disregard her health needs.

133. Appellant testified that she has documented at least five incidents of employees improperly using cleaning products or fragrances. On at least two of these occasions, Appellant had to use a rescue inhaler.

134. As for the respiratory masks the Cabinet has purchased for her, Appellant stated that she appreciated their purchase, but she has a very small face and they do not fit. She added that she cannot find a “pediatric” mask on-line. If the masks do not fit properly, there are gaps, and air comes in. Appellant stated that she cannot hold the mask tight to her face and continue to work. Appellant believes the problem would be solved if “management was more proactive in ensuring the directive [against fragrances] was followed.” Appellant stated, “I wouldn’t need a mask. All you have to do is require compliance.” Appellant denied that visitors to her floor have been responsible for any offensive smells. All respiratory incidents have been caused by Department of Revenue employees, Appellant stated.

135. Appellant took issue with Greg Jennings and Lori Detwiler’s testimony that Appellant’s primary function is filing. Appellant described that characterization as “a lie,”

stating that she performs many more tasks including creating spreadsheets and documenting “stats” on active coal accounts.

136. Appellant denied that she had tried to run Anna Gomez over. She was merely waiting for a friend.

137. Appellant explained her comments about certain employees’ sexual orientation: “If you are a lesbian, or bi-sexual, or a homosexual, that’s your business. I just don’t want a lifestyle to be coerced on me, like Cherlyn Hall tried to do.” Appellant stated that Cherlyn walked by her cubicle on February 26, 2015, and looked in. She described this incident as an example of a “sexual predator” being allowed to abuse her in the workplace. Appellant admitted to calling Cherlyn “psychotic,” and added: “There is very bizarre behavior on the part of Moore and Cherlyn.”

138. Appellant addressed the complaint she filed on September 23, 2014 (Appellee’s Exhibit 24), when Randy Moore asked her if she knew where the green paper was. Appellant stated that Moore “often uses innocuous comments to be hostile.” Appellant continued that “nothing is done. Management continues to condone the hostile work environment.”

139. Appellant addressed the issue of the security guard. She denied that she and the guard “sniffed” Anna Gomez; they walked by her work space to try to detect the odor. As for the note, Appellant wrote it because the guard did not have access to a computer. Appellant asked him if she could write a note and have him sign it if it met his recollection. The guard read, verified and signed the note.

140. Appellant denied that she forced her way into Randy Moore’s cubicle to clean his work space. She was merely helping him get organized when she had some downtime. She denied she made derogatory statements about his back issues.

141. Appellant referred to the suspension letter (Appellant Exhibit 1). She stated that she did ask Randy Moore if he thought Anna Gomez was a bi-sexual because of Gomez’s “enormous interest” in Appellant, and Gomez’s behavior, which Appellant described as “threatening.” Appellant added, “If your lifestyle is alternative, that is okay, but I don’t want to be a part of that.” Appellant stated that at the time she asked Moore about Gomez’s sexual orientation, she was new in the office and didn’t know how to take Gomez. “She was acting suspicious to me; she stood way too close. That’s why I was asking – he [Moore] was the only person in the office who worked closely to her [Gomez].”

142. Appellant addressed the allegation that she referred to Department of Revenue employees as “sex-starved, can’t keep their pants on.” Appellant stated, “That is my experience and I have reported it. And I have been retaliated against because of it. This sex-charged agency needs to be taken to task.” Appellant added, “If I have caused harm to anyone’s soul, I apologize. But I will never apologize for being honest or blunt.”

143. Appellant defended her use of the word “assault” when describing her detection of a chemical smell. Appellant stated, “When you have an action that directly affects a person’s well-being, that is considered an ‘assault.’”

144. On cross-examination, Appellant agreed that the ADA accommodations of an ergonomic chair and fluorescent lighting modifications had been successfully addressed by the Department of Revenue.

145. When asked what relief she was seeking, Appellant answered, “Every individual in my chain of command – Carla Briscoe, Lori Detwiler and Greg Jennings – should be terminated.” She added that David Gordon should be disciplined because “he sent out three e-mails but he has allowed these incidents to continue.”

146. Appellant was asked what fragrances or chemicals cause her respiratory problems. She answered that she is hyper-allergic to a variety of chemicals. When she goes to public places like the mall, she sometimes takes a mask and holds it to her face with her hands.

147. Appellant was asked if wearing a mask – even one that did not fit perfectly – wouldn’t mitigate some of the risks she faces regarding odors in the workplace. She answered, “No. I still get the odor. I have worn the mask a great deal in the office.” Appellant added, “If you find me a pediatric mask, I will try it. But the main thing is, if you would enforce compliance with the e-mails, there would be no need for a mask.”

148. Appellant was asked why she did not call any witnesses to substantiate her claims. She answered, “I have no witnesses, because they know if they testify they will be bullied, harassed and retaliated against.”

149. On re-direct, Appellant summarized her position, stating that she had “been unfairly suspended. I should be able to work in a safe environment. I need to be directed in a more appropriate way other than suspended. They are the American Al-Qaeda.”

150. KRS 18A.095(1) states:

18A.095 Rights of executive branch employees.

- (1) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

151. 101 KAR 1:345, Sections 1 and 4 state:

Section 1. General Provision.

Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 4. Suspension.

- (1) A suspension shall not exceed thirty (30) working days.
- (2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.
- (3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

FINDINGS OF FACT

1. Appellant, Teresa Hall, is a classified employee with status, employed as a Revenue Program Officer with the Department of Revenue.

2. By letter under the signature of Appointing Authority Honor Barker, Appellant was notified that she was being suspended for 15 days, effective October 20, 2014, for lack of good behavior and discriminatory behavior.

3. Appellant timely filed an appeal of this suspension on October 1, 2014. By Interim Order dated November 25, 2014, it was established that the issues for the evidentiary hearing would include the disciplinary action taken against Appellant, and Appellant's claims of discrimination, hostile work environment, and being penalized when her flex schedule was taken from her. The burden of proof was placed on Appellee to demonstrate the disciplinary action taken was neither excessive nor erroneous and was taken for just cause. The burden of proof was placed on the Appellant to demonstrate her claims of discrimination, hostile work environment and penalization regarding the removal of her flex schedule.

4. On June 17, 2014, an evidentiary hearing was conducted at the Personnel Board in the matter of Teresa Hall v. Finance and Administration Cabinet, Appeal No. 2013-286. The issue in that appeal was Appellant's claim that she had been subjected to sexual harassment and a hostile work environment. She also claimed retaliation and disability discrimination. In that hearing, Appellant testified that she had asked co-worker Randy Moore if he thought another Cabinet employee, Anna Gomez, was bisexual and interested in Appellant. Appellant also testified that she thought Gomez and Cabinet staff member, Cherlyn Hall, were bisexual "because of their actions, their words, their body language, and their facial expressions."

5. The above testimony was considered by Appellee to be discriminatory behavior in violation of Executive Order 2008-473, and Kentucky State Government policy. It was included as a charge in her suspension letter.

6. Randy Moore testified at the evidentiary hearing in the present case that "sometime mid-2013" Appellant had entered his cubicle and asked him if he thought Anna

Gomez was a lesbian. He answered her "Absolutely not." Appellant asked the same question of him two weeks later.

7. Appellant testified in the present case that she asked Moore if Gomez was a lesbian because Appellant perceived that Gomez had displayed an "enormous interest" in her, and she "didn't know how to take her." Appellant added that, in her opinion, "if your lifestyle is alternative, that is okay, but I don't want to be a part of that."

8. Appellant's direct supervisor, Lori Detwiler, testified that sometime in February 2014, just after Detwiler had been promoted to Branch Manager, Appellant advised Detwiler "there were lesbians in the office," adding she didn't think Detwiler was a lesbian, but that she "would keep an eye on her."

9. Following the June 17, 2014 hearing, Appellant filed a number of written complaints regarding various events she alleged had taken place in the office. These complaints are included as charges in her suspension letter as the reason that the Cabinet considers them to be "persistent, inappropriate and unsubstantiated slurs and of what appears to be a developing theme for disrupting the office with petty complaints." The suspension letter further advised Appellant that "[T]he manner in which you elect to react to the aforementioned situations is irrational and unacceptable. Discrimination and harassment are unlawful and your actions are so severe and pervasive that it has created a hostile work environment. While you have a right to file complaints, all employees have the right to work in an environment free of discrimination and harassment and your conduct as described above is discriminatory and constitutes mistreatment of others that cannot be tolerated." (Appellee's Exhibit 1, page 4.)

10. On June 24, 2014, Appellant filed a complaint that Cherlyn Hall (hereinafter referred to as "C. Hall"), a Department of Revenue employee stationed on the same floor as Appellant, "hovered" about Appellant's cubicle and "stared" at her. (Appellee's Exhibit 13.) In this complaint, Appellant characterized C. Hall's behavior as "invasive" and "obsessive." Appellant's third-line supervisor, Greg Jennings, and Appellant's first-line supervisor, Lori Detwiler, investigated this complaint by speaking with C. Hall. She explained that she had merely been speaking to her employee, Fred Brasseale, whom she supervised, and whose cubicle was close to Appellant's. Jennings and Detwiler also discussed the situation with Appellant. During this interview, Appellant "categorized all managers at DOR as corrupt and above the law." The complaint was found to be unsubstantiated.

11. On July 22, 2014, Appellant filed a complaint that C. Hall "peered" into her cubicle. (Appellee's Exhibit 15.) Jennings, Detwiler, and another supervisor, Carla Briscoe, investigated the complaint by speaking with C. Hall. She explained that she had been in another employee's cubicle with her back to Appellant's cubicle. She heard a noise and turned around. When she did, Appellant was in her cubicle, looking at C. Hall. Jennings, Detwiler, and Briscoe also discussed the incident with Appellant, and offered to move her to another cubicle. The complaint was found to be unsubstantiated.

12. On August 13, 2014, Appellant filed two complaints that Cherlyn Hall entered the restroom after Appellant, then followed her back to Appellant's cubicle. C. Hall then stuck her head in Appellant's cubicle and said: "I'm not following you." Appellant overheard Hall and Randy Moore laughing about the incident. (Appellee's Exhibits 17 and 18.) In this complaint (Appellee's Exhibit 18), Appellant stated that C. Hall continued to "pursue sexual predator behavior." Appellant also described C. Hall's behavior as "becoming more intense and psychotic." After investigating this complaint, Jennings admonished C. Hall "not to respond to [Appellant]", and not to discuss incidents regarding [Appellant] in Moore's cubicle. Jennings stated that Appellant "had made it clear she wanted nothing to do with C. Hall, including talking to her."

13. On September 23, 2014, Appellant filed a complaint regarding C. Hall's appearing at the entrance of Appellant's cubicle when Fred Brasseale asked Appellant's supervisor, Lori Detwiler, for his pretzels. (Appellee's Exhibit 21.) Appellant characterized Hall's actions in this instance as "stalking and harassment," and further evidence of C. Hall's "psychotic and abusive behavior." Jennings testified that Brasseale has a disability and C. Hall, his supervisor, assisted him in different ways, such as retrieving his pretzels from Detwiler, who was storing them for him. Jennings considered this complaint baseless and did not investigate it further.

14. On September 17, 2014, Appellant filed a written complaint regarding the behavior of fellow staff member, Randy Moore. Appellant alleged in this complaint that Moore talked too much about his personal life on the telephone, and made inappropriate comments. (Appellee's Exhibit 22.) Earlier that day, Appellant had met with Greg Jennings to complain about Moore. During the meeting, Appellant described Moore as "psychotic." Moore testified regarding the nature of his telephone conversations. He said his personal tone is meant to build rapport with the taxpayers and bankers that he deals with on the job. He stated that he "[S]peaks to regular people from rural areas," and attempts to speak to them "[O]n their level." Greg Jennings looked into this complaint and determined that Moore's behavior on the phone was not inappropriate. Jennings took no further action.

15. On September 23, 2014, Appellant filed a written complaint because Randy Moore told her that "[T]he coffee is ready," and then later asked Appellant "[W]here the green paper was." (Appellee's Exhibit 24.) Appellant characterized these comments as a "pathetic and desperate desire" to interact with her. Moore testified about these two events, and stated that his tone with Appellant was neither snide nor sarcastic. He denied that the incidents involved anything more than normal office interaction. Detwiler spoke to Appellant regarding this complaint. Detwiler noted that Appellant was very agitated and angry during their discussion. Appellant told Detwiler, "Randy Moore has just attempted to speak to me again today... You have to speak to him and tell him to quit trying to be nice or interact with me in any way. His behavior has to be stopped immediately." Moore was directed by Detwiler and Jennings to have no further interaction with Appellant.

16. On November 7, 2014, Appellant filed a written complaint alleging that Susan Penny, Motor Vehicle Tax Branch Manager, spoke loudly about an article relating to Bill

Cosby's alleged sexual abuse of women, and "laughed uncontrollably" about it. (Appellant's Exhibit 1.) In her complaint, Appellant stated, "It is disgusting that a person who is in a management position at DOR is entitled to utilize her position to broadcast sexually explicit and abusive incidents and derives great pleasure by others being degraded and abused."

17. An investigation into this alleged event was undertaken by Sherita Miller, a Program Investigative Officer for the Cabinet. Miller found that Penny did engage in a conversation about Bill Cosby because it was in the current news, but did not substantiate Appellant's assertion that Penny spoke or laughed inappropriately about the matter.

18. Jennings' summarized Appellant's complaints as "embellishments" with "hyperbolic language." He also stated that the strong language she used in her complaints, such as calling a co-worker "psychotic," was insulting and defamatory, noting that these words "[E]nd up in writing, and they end up in the public record." Jennings concluded that Appellant created a "toxic environment" in the office.

19. Jennings testified that a great deal of state resources were spent investigating Appellant's complaints. He estimated that they take up 75% of Lori Detwiler's time. When asked if Appellant was being disciplined for filing complaints, Jennings responded, "Other employees file complaints, but they have merit. These are baseless."

20. Appellant's direct supervisor, Lori Detwiler, summed up the nature of Appellant's complaints: "I think many times the facts have occurred, but they are just normal office interaction. But [Appellant] characterizes these facts, and her co-workers, in strong language."

21. Detwiler gave Appellant a Memorandum of Expectation on September 24, 2013, for "speaking to others in a derogatory manner and harassment." According to Detwiler, Appellant continued to exhibit that behavior and a revised Memorandum of Expectations was issued on October 27, 2014, approximately one month after the 15-day suspension (which is the basis for this appeal) was imposed.

22. Appellant received a three-day suspension on May 20, 2010, from her position of Revenue Program Officer, within the Enterprise Collections Branch, for "insubordination that is reflective of unacceptable work performance and lack of good behavior." On January 31, 2013, Appellant was suspended for five days from her position as Revenue Program Officer within the Office of Property Valuation, for sending a non-work related email. (Appellee's Exhibit 8.)

23. According to an undated memorandum prepared on the letterhead of Jennifer Hicks, Assistant ADA Coordinator for the Kentucky Office of the American with Disabilities Act, a meeting was held with Appellant in which it was decided that Appellant's ADA accommodations for her respiratory condition would be the agreement that "Aerosols are not being used currently by cleaning crew. Supervisors will add a line to signage asking that employees honor the area as a fragrance free zone." (Appellee's Exhibit 28.)

24. David Gordon, Executive Director of the Office of Property Valuation (OPV), sent two emails to all the staff on Appellant's floor regarding her ADA accommodations. His first email, sent May 16, 2013, informed OPV employees on the fourth floor that use of "aerosol sprays, room deodorizers, deodorizing plug-ins, fragrant candles and potpourri is prohibited in cubicles, bathrooms, and common areas" on that floor. Gordon sent a memorandum to his management staff two weeks later asking them to make sure their staff followed those guidelines. On December 9, 2014, Gordon re-issued the May 16, 2013 email with the notation that "perfumes/colognes" be added to the list of prohibited fragrances.

25. At the evidentiary hearing, Randy Moore testified that he was aware of Appellant's ADA accommodation, that is, that no one on her floor is to use sprays or perfumes. He testified that certain employees did not follow that directive. He recalled two men, in particular, who had worn cologne to work in the past six months.

26. At the evidentiary hearing, Honor Barker testified that Greg Jennings was in process of disseminating another email to staff located on Appellant's floor to clarify that the use of perfumes and colognes were forbidden in the workplace. This email was written to address Randy Moore's testimony earlier in the evidentiary hearing that some men continued to wear cologne.

27. The Cabinet provided Appellant with four respiratory masks that were chosen by her. The first one was purchased in September, 2013; a second one was ordered in February, 2014; a Honeycomb mask with activated carbon filter was ordered on January, 2015; a HealthyLife charcoal activated filter face mask was ordered on January 30, 2015. According to Appellant, none of these masks were acceptable. In her estimation, they did not fit her face properly. On February 27, 2015, Yvette Smith, the Cabinet's EEO Coordinator, sent Appellant a letter requesting that her health care provider or rehabilitation professional provide a recommendation to the Cabinet of the kind of mask that would enable her to perform the essential functions of her job. (Appellee's Exhibit 31.) As of the date of the evidentiary hearing, Appellant had not provided the Cabinet with that recommendation.

28. Appellant filed complaints on September 25, 2014; June 21, 2014; August 20, 2014; December 3, 2014; December 31, 2014; January 20, 2015; April 3, 2015; and April 9, 2015 (Appellant's Exhibit Nos. 4-7; 9, 11, 12, respectively), regarding odors she had smelled in the office. Each of these complaints was investigated by one or more of Appellant's supervisors. Detwiler testified that in her opinion, the staff follows Gordon's directive not to use sprays or other scented products, but often the source of the scent Appellant has complained of cannot be detected. Detwiler added, "We do our part, but we do not have control over everyone that comes onto the floor. [Appellant] needs to do her part as well by wearing her respiratory mask if she smells an odor."

29. On August 20, 2014, Appellant called the Personnel Board, stating that she had been "assaulted." The Board contacted Honor Barker who discussed the allegation with Appellant. Appellant clarified to her that someone had sprayed a substance in the office that led to what Appellant perceived to be a "chemical assault." Later in this conversation with Barker,

Appellant told her that Appellant's supervisors in the Department of Revenue were "sex-starved, couldn't keep their pants on, cubicle-hopped, and were incompetent."

30. Appellant testified that employees on her floor continue to use fragrances, and her supervisors' failure to enforce the ban against the scents has created unsafe working conditions for her.

31. On June 17, 2013, Carla Briscoe, one of Appellant's supervisors, testified that Appellant brought a letter to her stating that it was from the security guard, Eddie Tillman. (Appellee's Exhibit 37.) The letter stated that Appellant had asked Tillman to escort her to the fourth floor to verify an odor. Tillman smelled the scent, and noted that it was very strong in the area of Anna Gomez's cubicle. Briscoe was skeptical that the guard had actually written the letter himself, and when she asked him if he had, he said "No," but did admit to signing the document Appellant presented to him.

32. Appellant testified that she wrote the note for Tillman because he did not have access to a computer. After she typed it, she brought the note to Tillman who read and signed it. Appellant denied that she had represented to Briscoe that Tillman actually typed it.

33. All of these employees testified that they attempt to avoid having any contact with Appellant for fear that she would accuse them of harassing behavior.

CONCLUSIONS OF LAW

1. In Appellant's 15-day suspension letter (dated September 29, 2014), the Cabinet cited the following claims as grounds for the disciplinary action:

- A) "You have reportedly referenced the sexual orientation of others in the workplace on numerous occasions and are alleged to have routinely treated others in a discriminatory fashion." The Cabinet listed statements Appellant said under oath at the June 17, 2014 personnel board hearing as support of this charge.
- B) "You consistently claim that you are harassed by others but provide no substantive evidence....Conversely many others in your place of employment have expressed feeling bullied and harassed by you and fear being subject to false accusations."

As evidence of that charge, the Cabinet referenced an accusation Appellant made that C. Hall had groped her in the office.

- C) The request to Eddie Tillman, security guard, to go to the fourth floor with Appellant to investigate a scent around Anna Gomez' cubicle.

- D) The “array” of complaints Appellant made involving “innocuous events as peering, staring, and motioning by co-workers,” and the “repeated insinuations of C. Hall’s sexual orientation, disparaging and discriminatory remarks and inferences of sexual misconduct....”

The Cabinet summarized the above allegations as “examples of [Appellant’s] persistent and inappropriate and unsubstantiated slurs and of what appears to be a developing theme for disrupting the office with petty complaints.”

2. The Kentucky Civil Rights Act incorporates the anti-discrimination policies embodied in the Federal Civil Rights Act of 1964 (P.L. 88-352, Title VII – Equal Employment Opportunity-as amended).

3. Title VII of the Civil Rights Act, 42 U.S.C. §2000e *et seq.* makes it unlawful for an employer to discriminate against an employee for “opposing any practice made unlawful by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing” under Title VII.

4. The June 17, 2014 evidentiary hearing before the Personnel Board concerned an appeal Appellant filed alleging that she had been the victim of sexual harassment.

5. The complaints Appellant filed which are cited in the suspension letter as grounds for the disciplinary action taken against her were made in regard to Appellant’s claim of harassment by her co-workers, and alleged ADA violations.

6. In its Post Hearing Legal Brief, Appellee asserts that the Personnel Board has upheld disciplinary actions taken against employees for filing “false,” “frivolous,” and “misleading” reports. In support of that position, Appellee cites Burton v. Cabinet for Health and Family Services (Appeal No. 2002-461), and Sapp v. Workforce Development Cabinet (Appeal Nos. 96-250 and 96-461).

7. The Hearing Officer finds the instant case distinguishable from both Burton and Sapp for the following reasons: Burton involved the fact scenario of an employee making a *knowingly false* report in retaliation for a co-worker’s filing of a harassment claim against him. In the present case, no evidence was introduced into the record that Appellant knowingly filed a false report. While the complaints may be adjudged “false” and “frivolous” by the Cabinet, the actions complained of were clearly upsetting to the Appellant. Based on Appellant’s tone of voice, body language and demeanor, the Hearing Officer finds that Appellant sincerely believed the actions she reported were, in fact, either harassment by her co-workers or violations of the ADA accommodation the Cabinet agreed to provide her.¹

¹Appellee cites two other cases in its Post-Hearing Legal Brief in support of its contention that employees may be subject to discipline for making false or frivolous allegations. However, as discussed above, these cases involve fact situations different from this appeal. In *Joaquin v. City of Los Angeles*, 202 Cal. App. 4th 1207 (2012), Officer Joaquin was determined

8. As for Sapp, that appeal was dismissed by the board because there was “no proof of record that the agency retaliated toward Appellant over the large volume of grievances or open records requests that she initiated, but rather, the agency abundantly demonstrates that Appellant, who is quite competent and capable in the job she does, became so preoccupied with retaliation herself that her duties and the facility suffered. Consequently, the penalization in the form of a ten day suspension was with just cause.”

9. In the present case, no evidence was introduced into the record that the number of complaints Appellant filed affected her job performance.

10. Based on the above, the Hearing Officer finds that the charges contained in the September 29, 2014 suspension letter regarding the sworn statements Appellant made at the June 17, 2014 evidentiary hearing before the Personnel Board, and the reports she made claiming she was the victim of harassment and ADA violations, are not properly the grounds of a disciplinary action under the facts of this case. The Hearing Officer disregards them as alleged evidence of Appellant’s misconduct.

11. Appellee Finance and Administration Cabinet cited instances of misconduct in its September 29, 2014 suspension letter, in addition to Appellant’s testimony at the prior evidentiary hearing, and the statements in her complaints. This misconduct was sufficiently shown at the evidentiary hearing. Donna Durr-Richards recalled an incident with Appellant regarding the moving of some boxes in a hallway. She described Appellant’s behavior that day as being “loud and irrational.” Randy Moore testified that Appellant had accused him of faking a medical condition, and told him “throw your cane away and walk like a man.” Appellant also asked him if he thought Anna Gomez was a lesbian. Anna Gomez testified that on one occasion Appellant came very close to her and “watched” her. Lori Detwiler testified that Appellant told her she didn’t “think she (Detwiler) was a lesbian, but she would keep an eye on her.” Honor Barker testified that Appellant told her Department of Revenue employees were “incompetent.” In a conversation with Greg Jennings, Appellant described Randy Moore as “psychotic.” Many witnesses testified that they felt “bullied and harassed” by Appellant.

12. Appellant was put on notice that such unprofessional behavior in the office would not be tolerated. A Memorandum of Expectation was issued to Appellant on September 24, 2013, directing her to “act professionally at all times.” Appellant was also admonished that “speaking to others in a derogatory manner and harassment are behaviors that cannot continue.”

13. The negative impact Appellant’s words and actions have had on the morale and well-being of the staff she works with was well-demonstrated at the evidentiary hearing.

to have fabricated his report of sexual harassment in hopes of circumventing an impending disciplinary action. In *McCullough v. University of Arkansas for Medical Sciences*, 559 F.3d 855 (2009), Al McCullough filed a false claim of sexual harassment after two co-workers accused him of sexual harassment.

14. Appellant's conduct satisfied the elements of poor work performance and misconduct pursuant to 101 KAR 1:345.

15. Appellant's comments and behavior were sufficient to warrant a fifteen-day suspension.

16. The burden of proof was placed on Appellant to demonstrate her claims of ADA discrimination, hostile work environment, and penalization regarding the removal of her flex schedule. Each of these claims is dealt with separately, below:

A. ADA DISCRIMINATION

It was uncontested that Appellant had been granted an ADA accommodation for her respiratory condition. In an undated memorandum prepared by Jennifer Hicks, then Assistant ADA Coordinator, this accommodation is denoted as the agreement that "Aerosols are not being used currently by cleaning crew. Supervisors will add a line to signage asking that employees honor the area as a fragrance-free zone." On May 16, 2013, a memorandum prepared by David Gordon, Executive Director of the Office of Property Valuation, was sent out to all staff members on the 4th floor, where Appellant's work station is located. The memo informed those employees that use of "aerosol sprays, room deodorizers, deodorizing plug-ins, fragrant candles and potpourri is prohibited in cubicles, bathrooms, and common areas" on that floor. Two weeks later, Gordon sent a memorandum to his management team asking them to make sure staff followed those guidelines. A second memorandum to fourth floor office staff was sent out by Gordon on December 9, 2014. In that email, Gordon added "perfumes/colognes" to the list of prohibited substances.

Appellant filed a number of complaints, stating that she had detected an offensive odor in her work area. The evidence of record showed that each of these complaints was investigated by a member of management to attempt to determine the source of the odor.

Randy Moore testified at the evidentiary hearing that some men on the fourth floor continued to wear cologne. Honor Barker testified that in response to that statement, Greg Jennings was in the process of sending out another email to address the issue.

In addition to setting written policy concerning the use of fragrances and scents on the fourth floor, the Cabinet also provided the Appellant with 4 respiratory masks of her own choosing. What was developed at the evidentiary hearing was that Appellant did not find the masks acceptable and seldom wore them.

On February 27, 2015, Yvette Smith sent a letter to Appellant requesting that additional information be provided to the Cabinet before another mask could be purchased. As of the date of the evidentiary hearing, Appellant had not responded to this request.

Appellant failed to satisfy her burden of proof to show that the Cabinet violated the ADA accommodations provided to her. The Cabinet timely responded to her allegations of ADA violations, directing employees to abide by certain restrictions and investigating incidents brought to its attention by Appellant.

B. PENALIZATION

Appellant contends that she has been “penalized” by being taken off a flexible work schedule.

A “penalization” means “demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause of authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.” KRS 18A.005 (24).

Appellant had been allowed to work a flexible schedule for several months that consisted of working Monday through Thursday, 6:30 a.m. to 5:00 p.m., with Friday being her “off” day. Pursuant to the September 29, 2014 suspension letter, Appellant was placed back on a regular work schedule, that is, 8:00 a.m. to 4:30 p.m. Honor Barker testified that the reason for taking Appellant off a flex schedule was to “more align” her schedule with that of her supervisor, Lori Detwiler. Barker added: “Flex scheduling is a privilege. We try to extend it when it works for the individual and the agency. In this case, it was no longer meeting the needs of the agency.”

Putting Appellant back on regular work hours did not affect Appellant’s job duties or salary in any way. Appellant failed to carry her burden of proof to show that being taken off a flexible work schedule was a “penalization.”

C. HOSTILE WORK ENVIRONMENT

The Kentucky Civil Rights Act incorporates the anti-discrimination policies embodied in the Federal Civil Rights Act of 1964 (P.L. 88-352, Title VII, Equal Employment Opportunity) as amended. The applicable standard to determine whether Title VII is violated, is “when the

workplace is permeated with discriminatory behavior that is sufficiently severe or pervasive to create a discriminatorily hostile or abusive working environment. This standard requires an objectively hostile or abusive environment; one that a reasonable person would find hostile or abusive...as well as the victim's subjective perception that the environment is abusive. See *Harris v. Forklift Systems, Inc.*, 510 U.S. 17; *Meritor Savings Bank v. Vinson*, 477 U.S. 57. The determination whether an environment is "hostile may be made only by looking at all the circumstances, which may include the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Furthermore, the effect on the employee's psychological wellbeing is relevant in determining whether Plaintiff actually found the environment abusive. See *Harris v. Forklift Systems, Inc.*, 510 U.S. 17.

The behavior Appellant complained of can be categorized as either normal office interaction (e.g., asking where the green paper was; telling Appellant a pot of coffee was ready; frequenting a subordinate's cubicle; leaving the restroom at the same time as Appellant, moving boxes around a crowded hallway); or the day to day conversations that are not uncommon in most office settings (e.g., discussing Bill Cosby as a news item; discussing the attempted suicide of a co-worker). There was a failure of proof that there was any untoward, sexual, or hostile intent by any co-worker during such occasions.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **TERESA G. HALL V. FINANCE AND ADMINISTRATION CABINET, (APPEAL NO. 2014-217)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Colleen Beach** this 20th day of August, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Cary Bishop
Ms. Teresa G. Hall



Commonwealth of Kentucky
FINANCE AND ADMINISTRATION CABINET
OFFICE OF ADMINISTRATIVE SERVICES

STEVEN L. BESHEAR
Governor

DIVISION OF HUMAN RESOURCES
Room 388, New Capitol Annex
Frankfort, Kentucky 40601
(502) 564-7233
(502) 564-2613 Facsimile

LORI H. FLANERY
Secretary

HONOR F. BARKER
Director

September 29, 2014

Teresa G. Hall

Employee PerNr:
Dear Ms. Hall:

In accordance with KRS 18A.095, you are notified that you are suspended from duty and pay for a period of fifteen (15) business days from your position as Revenue Program Officer within the Department of Revenue. This period of suspension is effective beginning of business Tuesday, September 30, 2014 and will commence through close of business on Monday, October 20, 2014. You will return to work at your regularly scheduled time on Tuesday, October 21, 2014.

This action is taken pursuant to 101 KAR 1:345, Section 1, relating to a lack of good behavior, and for discriminatory behavior in violation of Executive Order 2008-473 relating to Equal Employment Opportunity (EEO) and Non-Discrimination in Employment in Kentucky State Government, and Kentucky State Government Equal Employment Opportunity (EEO) Policy, Sexual Harassment Policy and Policy Statement on Harassment Prevention.

You have reportedly referenced the sexual orientation of others in the workplace on numerous occasions and are alleged to have routinely treated others in a discriminatory fashion. During your June 17, 2014 Personnel Board evidentiary hearing, you admitted that you asked Randy Moore "if he thought Anna Gomez was bisexual and interested in me" and that you previously stated to your supervisor, Lori Detwiler, that you did not believe she was lesbian or bisexual because "you don't act like that, you don't act like a bisexual and you've never exhibited those towards me." You testified that Anna Gomez and Cheryl Hall are bisexual and that you believe this because of their "actions, their words, their body language, and their facial expressions." You state that the Department of Revenue is a "very, very sexual agency" and that there "are a lot of lesbians and bisexuals at the Department" but that other than Anna and Cheryl you don't think there are others in your office who are "confused about their gender."

You consistently claim that you are harassed by others but provide no substantive evidence, often saying that you have additional information but refusing to reveal it. Conversely, many others in your place of employment, co-workers as well as supervisors, have expressed feeling bullied and harassed by you and fear being subject to false accusations; as on numerous accusations you continue to make without supporting evidence.

For instance, you accused co-worker Cheryln Hall of sexual harassment alleging that she groped you in the office. However, Cheryln denied the incident and Lori Detwiler, your supervisor who was present throughout the alleged incident, also stated that it did not occur.

On two separate occasions, you have removed a security guard from the building security desk and brought him to your floor to perform a walk around, indicating that improper actions had occurred. On one occasion you asked him to sniff the person of Anna Gomez as well as her work area and afterwards prepared a written statement and attempted to pass it off as having been authored by the security officer. Though you claim that he read and signed in agreement, the security officer stated that you asked him to sign the bottom of your statement simply to verify that he walked around with you. Nowhere on the document does it indicate that you authored the document. This is inappropriate and unacceptable conduct intended to harass your fellow employees.

Following the evidentiary hearing in June, you have filed an array of complaints involving such innocuous events as peering, staring, and motioning by co-workers, as well as with reasonable comments and questions from others. It seems as though you want no contact, communication, or interaction of any kind in the workplace and that is not feasible. Your complaints also contain repeated insinuations of Cheryln Hall's sexual orientation, disparaging and discriminatory remarks, and inferences of sexual misconduct where nothing of a sexual nature seems present. This is unacceptable and cannot be permitted.

Specifically, on June 24, 2014, in a letter of complaint to your supervisor, Lori Detwiler, you complained that Cheryln Hall was "hovering" and that she "almost" ran into you as she rounded a hallway corner. You additionally complained that during a staff gathering to inform everyone of a pizza party, she stared at you while standing by another individual's cubicle area. You claimed this was another example of "her harassment, stalking and obsessive behavior towards me" and stated that you "would appreciate managerial encouragement for her to curb her urges." This alleged incident was investigated and no improper conduct was deemed to have occurred.

On July 22, 2014 you filed a written complaint alleging that Cheryln Hall peered into your cubicle area from another employee cubicle belonging to Fred Brasseale. You claim that she did this during both your morning and afternoon break times (9:30A and 2:30P) and stated "I would appreciate managerial encouragement for her to curb her urges. Please address this with her. I do not want any contact or communication with her. I am very uncomfortable with her continued stalking and obsession with me. I would appreciate being able to work in a safe office environment without the persistent unprofessional, bullying, retaliation, obsessive behavior and sexual harassment from Cheryln Hall." This alleged incident was investigated and no improper conduct was established. However, you were extended an offer to move to a different location that would be quieter and more secluded and while you initially accepted, you later declined to move.

The morning of August 13, 2014 you filed a written complaint claiming that Cheryln Hall stalked you by following you into and out of the restroom and back to your cubicle and again stated "I would appreciate managerial encouragement for her to curb her urges. Please address this with her. I do not want any contact or communication with her. I am very uncomfortable with her continued stalking and obsession with me. I would appreciate being able to work in a safe office environment without the persistent unprofessional, bullying, retaliation, obsessive behavior and sexual harassment from Cheryln Hall."

On the afternoon of that same day, August 13, 2014, you filed a separate written claim stating that you overheard Cheryln Hall asking Randy Moore whether he might be following her (Cheryln Hall) and that he replied that he was not but wondered whether she might be following him, and that the exchange was followed by laughter. You claimed that "as a taxpayer it is very disconcerting that DOR & FAC management has chosen to permit & encourage this ongoing inappropriate, unprofessional & psychotic behavior" and further claimed that Cheryln Hall "is continuing to pursue sexual predator behavior towards me. Since I have no interest in her, she is retaliating, choosing stalking & harassment as her venue. It is very alarming that she involves others in her disturbing behavior." Both alleged incidents on this date were investigated and no substantive evidence was found to support either. While you claimed to have witnesses who could verify your claims, when pressed to disclose the names, you refused.

On August 20, 2014, you called the offices of the Personnel Board to report that you had been assaulted. As a result, I called to speak with you and you first responded to me saying that you were unsure what I was talking about but when I explained that I was informed of your call to the Board office, you then said "Oh yes, I do recall that." You then explained that there was an intentional assault on you by someone wearing strong perfume and you felt certain that it was Susan Penny. You went on to state that there are many things that I needed to know including that there is a contingent effort within the Department of Revenue to promote incompetency and those with no skill set and that supervisors there are "sex-starved and cannot keep their pants on or hands to themselves". You stated that they almost all cube nup and use bad language and that one in particular smokes pot in the parking garage and management knows it but continues to let her get away with it. However when I asked what basis you had for the allegations, you stated that you had plenty of evidence and a long list of witnesses but that you would not reveal that to me. You stated "maybe one day" though. In response to your complaint, your Director, Greg Jennings, performed an immediate and thorough investigation of the area and identified no fragrance or strong odors of any kind.

On September 11, 2014 you claimed that while conversing with your supervisor, Lori Detwiler, in her work area, you heard Mr. Brasseale ask for pretzels that she had been holding for him; after which you claim that Cheryln Hall appeared in the doorway to retrieve the bag of pretzels for Mr. Brasseale. Your complaint centered on the fact that Mr. Brasseale verbalized the need for the pretzels yet Cheryln Hall retrieved them. You therefore deemed that to be harassment and felt it was a reflection of her obsession with you.

On September 17, 2014 you met with your Director, Greg Jennings, to point out that Randy Moore was talking too much about his personal life to someone on the telephone, stating that it was unprofessional and inappropriate. You repeatedly said that Mr. Moore was "psychotic" and based your analysis on having worked with battered women. The following day you submitted a written complaint on the matter to your supervisor stating "I continue to hear this incompetency daily and am concerned with the ongoing psychotic behavior and language of Randy Moore."

On September 23, 2014 you filed a written complaint that while you were using the microwave in a common area, Randy Moore addressed you to say that he made coffee and it was ready. You specifically requested "Please advise him, I do not share the psychotic fixation he has regarding coffee or the preparation of coffee." You also complained that the prior afternoon while you were working in the Coal File/Map area, Mr. Moore came in and asked whether you knew where the thick green paper was and that you wondered why he didn't go ask someone else and asked "Is this the prelude of me being assaulted again?" You stated "I am extremely uncomfortable with this latest pathetic

and desperate desire of Randy Moore to interact with me. Please address this incident with him, advise him that I am not his go to person and ask him to refrain from interrupting my work."

The above are examples of your persistent inappropriate and unsubstantiated slurs and of what appears to be a developing theme for disrupting the office with petty complaints. The manner in which you elected to react to the aforementioned situations is irrational and unacceptable. Discrimination and harassment are unlawful and your actions are so severe and pervasive that it has created a hostile work environment. While you have a right to file complaints, all employees have the right to work in an environment free of discrimination and harassment and your conduct as described above is discriminatory and constitutes mistreatment of others that cannot be tolerated.

Pursuant to Executive Order 2008-473 and relevant state and federal laws, it is the Commonwealth of Kentucky's policy to provide equal employment opportunity to all people in all aspects of employer-employee relations without discrimination, to include sexual orientation or gender identity. The Kentucky State Government Sexual Harassment Policy and Policy Statement on Harassment Prevention are clear that state law prohibits verbal as well as physical conduct of a sexual nature that creates, or intends to create, a hostile or offensive working environment and require immediate and appropriate corrective action, when substantiated, to stop harassment and prevent its recurrence. These policy statements also advise employees that disciplinary action may be taken against persons found to have knowingly and purposely filed false claims.

The Finance and Administration Cabinet promotes a progressive approach to discipline and this action is in keeping with Cabinet Procedure 2.4 relating to employee discipline. A review of your disciplinary history reveals that in addition to numerous counselings with regard to your conduct, the following disciplinary/corrective measures have occurred:

- August 2008 -- you were issued a PIP due to complaints concerning rude and disrespectful behavior toward your supervisor, co-workers, and clients/customers;
- January 2009 you were issued another PIP as a result of not having followed the one previously issued;
- July 2009 you received an official Letter of Reprimand for failure to show improvement and failure to follow directives to act professionally and properly interact with others.
- May 20, 2010, you were issued a three day suspension due to continued instances of insubordination and unacceptable conduct; and
- January 31, 2013 you were issued a five day suspension for improper use of state resources for distribution of electronic information in violation of hostile workplace laws.

You are a representative of the Department of Revenue and your actions are often seen and heard by taxpayers and visitors. Therefore, you are expected to behave in a reasonably professional manner and not be disruptive to office operations. You are required to treat supervisors and co-workers in a respectful manner and interact with them and visitors/clients in a reasonable fashion. You must immediately cease to reference the sexual orientation of others, cease to behave in an otherwise harassing manner, and cease with the menacing complaints and false accusations for which you refuse to divulge information in its entirety.

The decision to take this action was made after careful consideration of the above mentioned acts and circumstances. It is important for you to understand that further offenses may result in disciplinary action, up to and including dismissal. Also, because many of the alleged incidents occur


Teresa G. Hall
15 day suspension
9/29/2014
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during times that you are in the workplace prior to your supervisor and for which you claim to need supervisory attention, upon your return from suspension you will adhere to a schedule working Monday through Friday, 8:00 AM to 5:00 PM.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with personal problems that may be affecting your personal life and/or job performance. KEAP can be reached at (800) 445-5327 or (502) 564-5788.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,


Honor Barker, Appointing Authority
Finance and Administration Cabinet

Attachments: Appeal Form

cc: Timothy Longmeyer, Secretary of the Personnel Cabinet
Troy Robinson, Executive Director, Office of Administrative Services
Elyse Weigel, Deputy Commissioner, Department of Revenue
David Gordon, Executive Director, Office of Property Valuation
Gregory Jennings, Division Director, Division of Minerals Taxation and GIS Services
Lori Detwiler, Revenue Branch Manager, Minerals Severance Tax Branch
Personnel File